

R.D. # 0008-04
Jersey City, NJ

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 22

FJC SECURITY SERVICES, INC.,
Employer

and

CASE 22-RC-12463

SECURITY WORKERS OF AMERICA,
LOCAL NO. 819
Petitioner

DECISION AND ORDERS

I. Introduction:

The Employer seeks a dismissal of the petition filed by the Petitioner on the bases that (1) the Petitioner is indirectly affiliated with another labor organization that admits to membership non-guard employees and, as such, cannot be certified as a labor organization of security guards pursuant to Section 9(b)(3) of the Act; and (2) even if the Petitioner were a certifiable guard union, the only appropriate unit for collective bargaining is one consisting of security guards employed at all six of its New Jersey locations, not the three sought by the Petitioner. Special and Superior Officers Benevolent Association, herein the Intervenor, was permitted to intervene in this matter

and, in agreement with the Employer, contends the appropriate unit here consists of the security guards employed at all six of the Employer's New Jersey facilities.¹

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,² the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.³
3. The labor organizations involved claim to represent certain employees of the Employer.⁴
4. No question affecting commerce exists concerning the representation of certain employees of Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act, for the following reasons:

As set forth below, I find that Petitioner is indirectly affiliated with a labor organization that admits to membership non-guard employees and, as such, is not

¹ The record is silent as to the basis upon which the Intervenor was permitted to intervene. Nevertheless, I have taken administrative notice that the Intervenor has presented an appropriate showing of interest. Accordingly, I find that the Intervenor was properly allowed to intervene in this proceeding.

² A Brief filed by the Employer was considered. No other briefs were filed.

³ The Employer is a New Jersey corporation engaged in the provision of security guard and related services for the Port Authority of New York and New Jersey at the following six New Jersey locations: Journal Square, Harrison, Jersey City, George Washington Bridge, New Jersey Lease Properties and Newark Airport, the only locations involved herein.

⁴ The parties stipulated that the Intervenor is a labor organization within the meaning of Section 2(5) of the Act. The status of the Petitioner will be discussed *infra*.

qualified for certification pursuant to Section 9(b)(3) of the Act. In view of this finding, it is unnecessary for me to pass on the issue of whether a unit consisting of security guards employed at six of the Employer's facilities is more appropriate than a unit consisting of security guards employed at three of the Employer's facilities. Accordingly, I intend to dismiss the Petition filed herein. However, as the Intervenor and the Employer are in agreement with regard to the appropriate unit for representation, the Intervenor is hereby given the opportunity to submit the requisite petitioner's showing of interest necessary to support its unit contention. This showing of interest must be submitted to the undersigned by close of business **May 10, 2004**. If the requisite showing of interest is not submitted by that date, the petition is dismissed.

II. Facts:

(a) Relationships between Petitioner and other labor organizations

The record reveals that the Petitioner was established sometime towards the end of 2002 or beginning of 2003. Since Petitioner's inception, Darlene Parisi has served as the Petitioner's Vice-President. Mary Ann Sullivan is the Petitioner's President, William Sullivan its Secretary-Treasurer⁵ and Ed Zanick an Organizer. Parisi testified that she is also President of Local 143, Production Service Workers Union, herein Local 143, a non-guard union. Additionally, the record reveals that Zanick is a paid business agent for the Operating Engineers Union, also a non-guard union.

⁵ Although it appears from an LM-3 document, attached to the Employer's brief as Exhibit 1, that William Sullivan also serves as Secretary-Treasurer for Local Union No. 1130, United Construction Trades Industrial Employees Union, I note that this document was not introduced into evidence at the hearing; as such, it will not be considered.

Parisi testified that Petitioner has a desk at the offices of Local 143, located at 3175 Tremont Avenue, Bronx, New York. Parisi further testified that Petitioner does not pay rent to Local 143 for that office space and that Petitioner's name does not appear on any office/building directory. The record reveals that Petitioner represents approximately 150 guards and has negotiated and entered into at least one collective bargaining agreement with an employer. Petitioner does not maintain its own welfare and pension fund. Instead, it participates in a health and welfare fund sponsored by UNITE. Local 143 also participates in that health and welfare fund.

III. Analysis:

(a) Legal Principles

The Employer asserts that Petitioner is indirectly affiliated with nonguard unions and as such cannot be certified pursuant to Section 9(b)(3) of the Act. I agree.

Section 9(b)(3) of the Act provides that the Board shall not certify a labor organization "as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards."

Indirect affiliation exists when a nonguard union participates in a guard union's affairs to such an extent and for such a duration of time as to indicate that the guard union has lost the freedom and independence to formulate its own policies and principles. *Wilcox Construction Co., Inc.*, 87 NLRB 371 (1949); *Magnavox Co.*, 97 NLRB 1111 (1951); *Wells Fargo Guard Service*, 236 NLRB 1196 (1978); *Brinks Inc.*, 274 NLRB 970 (1985). The Board has declined to find indirect affiliation when

a guard union receives temporary assistance from a nonguard union during the guard union's infancy, reasoning that if a new guard union is prohibited from receiving any measure of assistance from a more established nonguard union, then "it is likely never to get off the ground." *Lee Adjustment Center*, 325 NLRB 375 (1998); *Armored Transport of California, Inc.*, 269 NLRB 683 (1984); *The Wackenhut Corporation*, 223 NLRB 1131 (1976); *Wilcox Construction Co., Inc.*, above. Other than assistance during a union's infancy, the Board has made clear that indirect affiliation will be found when officials and/or principals of a guard union also hold official positions in a nonguard union. *Ibid.* Applying these principals to the instant case, I am satisfied that there exists an indirect affiliation between Petitioner and Local 143 and the Operating Engineers Union. I will first address the issue of Petitioner's indirect affiliation and second address Petitioner's affiliation being beyond its formative stage.

(b) Indirect affiliation

Board law has made clear that the existence of common officers in a guard and nonguard union creates a realistic potential conflict in the formulations of policies affecting the guard union. In this regard, in *Wilcox Construction*, above, the president and vice presidents of a petitioning guard union also served as president and officers, respectively of a nonguard union. There, the Board refused to certify the petitioner, regardless of the fact that the guard union or its officials received no remuneration from the nonguard union. The Board reasoned that the simultaneous holding of principal offices in the nonguard union and the formation of policies by officers of

that nonguard union constitute the type of indirect affiliation Congress intended to proscribe. *Id.* at 372.

In *Wackenhut Corp.*, above, the Board dismissed a petition where the record disclosed that the petitioning guard union shared office space and clerical staff with a nonguard union and where the nonguard union's officials were also officials in the petitioning guard union. The Board reasoned that the petitioner's dependence upon the nonguard union and its officials indicated a lack of freedom and independence in formulating its own policies and deciding its own course of action. *Id.* at 1132.

Indirect affiliation was similarly found in *Armored Transport of California, Inc.*, above. In that case, the Board gave particular consideration to the fact that petitioner's officials were simultaneously employed on a full-time basis by a nonguard union. The Board maintained that the clear intent of Congress in enacting Section 9(b)(3) of the Act was that a union that represents guards should be completely divorced from a union that represents nonguard employees. *Id.* at 683.

In the instant case, Parisi, Petitioner's Vice-President, admits that she is the President of Local 143. Although the record is silent with regard to what, if any, compensation Parisi receives from Local 143, such a factor, as evidenced in *Wilcox*, is not dispositive. In *Wilcox*, the Board refused to certify the petitioner regardless of the fact that the guard union official received no remuneration from the nonguard union. Here, not only does Parisi concurrently hold principal positions in both the Petitioner and a nonguard union, she acknowledged that Ed Zanick, Petitioner's Organizer, is employed by yet another nonguard union, the Operating Engineers. The record

reveals that Parisi and Zanick have held these dual positions since Petitioner's establishment. This is clearly the type of indirect affiliation Congress intended to proscribe. *Lee Adjustment Center*, above; *Armored Transport of California, Inc.*, above; *The Wackenhut Corporation*, above; *Wilcox Construction Co., Inc.*, above.

The facts in the instant matter, as noted above, disclose that Petitioner shares Local 143's office space and desk, does not pay rent to Local 143 and has shared Local 143's office space for over a year; yet its name does not appear on an office directory. Other than Parisi's self-serving statement that there is no relation between the Petitioner and Local 143, Petitioner failed to proffer any evidence to support this contention. Under the circumstances, it cannot be found that Petitioner is completely divorced from Local 143. Nor can it be found that Petitioner is free to formulate policies and internal rules affecting its members without indirect influence by either Local 143 or the Operating Engineers.

(c) Start Up Status

In *Lee Adjustment Center*, above, the Board reversed a regional director's finding that the petitioner was indirectly affiliated with a nonguard union. In that case, the regional director focused on the assistance received by the petitioner, from a nonguard union, during an 8-month period of time (from the petitioning union's inception through its first collective bargaining session with an employer) finding that the relationship went beyond start up help. In reversing, the Board reasoned that the newly formed petitioner had severed its relationship with the nonguard union after its first collective bargaining session with an employer, thus terminating its indirect

affiliation. Unlike the petitioner in *Lee Adjustment Center*, the record here is devoid of any evidence demonstrating Petitioner's disconnect with either Local 143 or the Operating Engineers. Additionally, although the record is vague as to the exact date of Petitioner's inception, the record does reveal that Petitioner commenced its operations sometime towards the end of 2002, beginning of 2003. Also unlike *Lee Adjustment Center*, the record here reveals that the Petitioner has approximately 150 members and has entered into at least one collective bargaining agreement with an employer. Thus, it can hardly be said that, at the time of the hearing Petitioner was a fledgling organization.

For the reasons discussed above, I find that Petitioner is indirectly affiliated with Local 143 and the Operating Engineers and that such affiliation extended beyond Petitioner's infancy, thereby precluding its certification by the Board in the unit it seeks here. Therefore, I will issue the following orders.

IV. ORDERS

IT IS HEREBY ORDERED that the petition filed herein be, and it hereby is, dismissed, and

IT IS FURTHER ORDERED that the Intervenor has until the close of business **May 10, 2004** to submit the requisite showing of interest necessary to support a petitioner's interest in this matter.

V. RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision and Orders may be filed with the National Labor

Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. The Board in Washington must receive this request by **May 14, 2004.**

Signed at Newark, New Jersey this 3rd day of May 2004.

/s/Gary T. Kendellen

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